BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	)	
	)	
	)	
	)	
CHIRAG NARAYAN AMIN, M.D.	)	**MBC No. 16-2009-203756**
	)	
Physician's & Surgeon's Certificate No. A 72688	)	
	)	
	)	
Petitioner.	)	
	)	

DENIAL BY OPERATION OF LAW
PETITION FOR RECONSIDERATION

No action having been taken on the petition for reconsideration, filed by Petitioner's attorney, Courtney E. Pilchman, and the time for action having expired at 5 p.m. on October 28, 2013, the petition is deemed denied by operation of law.

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	)	
	)	
	)	
	)	
CHIRAG NARAYAN AMIN, M.D.	)	**MBC No. 16-2009-203756**
	)	
	)	
Physician's & Surgeon's	)	
Certificate No. A 72688	)	
	)	
	)	
Respondent.	)	

ORDER GRANTING STAY

The Medical Board of California (Board) has filed a Request for a Stay of execution of the Decision in this matter with an effective date of October 18, 2013.

Execution is stayed until **October 28, 2013.**

This stay is granted solely for the purpose of allowing the Board time to consider the Petition for Reconsideration.

DATED: **October 16, 2013 .**

A. Renee Threadgill

A. Renee Threadgill
Chief of Enforcement
Medical Board of California

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	)	
	)	
	)	
CHIRAG NARAYAN AMIN, M.D.	)	**Case No. 16-2009-203756**
	)	
	)	**OAH No. 2011090374**
Physician's and Surgeon's Certificate No. A 72688	)	
	)	
	)	
Respondent.	)	
	)	

DECISION

The attached Proposed Decision is hereby adopted by the Medical Board of California, Department of Consumer Affairs, State of California, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on October 18, 2013.

IT IS SO ORDERED September 19, 2013.

MEDICAL BOARD OF CALIFORNIA

By: _____
Barbara Yaroslavsky, Chair
Panel A

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation against:	
CHIRAG NARAYAN AMIN, M.D.	Case No. 16-2009-203756
Physician's and Surgeon's Certificate No. A72688	OAH No. 2011090374
Respondent.	

PROPOSED DECISION

Administrative Law Judge Vallera J. Johnson, State of California, Office of Administrative Hearings, heard this matter in San Diego, California, on July 22, 2013.

Matthew M. Davis, Deputy Attorney General, represented complainant Kimberly Kirchmeyer, Interim Executive Director of the Medical Board of California.

Courtney E. Pilchman, Esq., Pilchman & Kay, PLC represented respondent Chirag Narayan Amin, M.D.

The matter was submitted on July 22, 2013.

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FACTUAL FINDINGS

1. Linda K. Whitney, the Interim Executive Director of the Medical Board of California, Department of Consumer Affairs (Medical Board) filed Accusation, Case No. 16-2009-203756, dated March 24, 2010, against Chirag Narayan Amin, M.D. (respondent) in her official capacity.[1]

Respondent filed a timely Notice of Defense, requesting a hearing in this matter.

[1] Since the filing of the Accusation, Kimberly Kirchmeyer has assumed the position of Interim Executive Director of the Medical Board.

In May 2012, the parties entered into a Stipulated Settlement and Disciplinary Order that was not adopted by the Medical Board.

This hearing ensued on July 22, 2013.

2. On July 27, 2000, the Medical Board issued respondent Physician's and Surgeon's Certificate No. A72688. At all times relevant herein, said license was in full force and effect and will expire on October 31, 2013, unless renewed.

3. Respondent provided evidence of his professional background and medical practice.

He obtained a bachelor's of science degree from the University of Illinois. He graduated in honors biology with a minor in chemistry. He completed his medical education at the University of Miami. Respondent excelled academically in undergraduate and medical school. He entered surgical training as a resident physician in orthopedic surgery at Orlando Regional Medical Center.

Respondent began practicing medicine in California in September 2000. For nine months or so, he worked in several medical clinics. In June 2001, respondent opened his own office as an orthopedic surgeon in Riverside, California. The majority (80% to 90%) of his practice involves patients who are (1) injured workers (individuals who sustained injuries on the job), (2) involved in motor vehicle accidents, (3) have been injured in "slip and fall" accidents, and/or (4) require disability evaluations. In addition, through the law office of Bender and Bender, he has completed evaluations for the Department of Social Security. Finally, respondent testified that he has completed more than 1,000 evaluations for injured workers appearing before the California Workers' Compensation Appeal Board. He is not a qualified medical examiner in the State of California.

Respondent has held licenses to practice medicine in Florida, California, New Mexico and Washington.

4. Respondent described his medical practice in the State of Washington.

He testified that in or about April 2005, an administrator with whom he worked in a medical clinic in California contacted respondent about possibly working in Washington; the administrator had physicians working in Washington but none of them were familiar with writing comprehensive legal impairment reports, and none of them knew how to thoroughly and appropriately evaluate and provide an impairment rating per the American Medical Association guidelines.

Respondent practiced medicine in Washington between April 2005 and April 2009. He performed evaluations and wrote reports similar to those that he did in California. During this time, respondent worked in Washington one week per month.

Respondent ceased his medical practice in Washington for personal reasons. The time spent in Washington took a toll on his marriage and on him physically.

5. Effective December 3, 2009, Respondent and the Washington Medical Quality Assurance Commission (Commission) entered into a "Stipulation to Informal Disposition" that states, in part:

- On January 31, 2009, respondent entered into a Settlement Agreement with L & I. L & I had conducted a comprehensive evaluation of the care provided by respondent to 21 injured workers. Respondent agreed to refund L & I $50,000 for recoupment of payments for medically unnecessary care and penalties. Also he agreed to discontinue in-office diagnostic testing and to permanently discontinue examining, evaluating and treating injured workers covered by Revised Code of Washington (RCW) Title 51.

- In the Stipulation, certain facts regarding respondent's care and treatment of four patients were alleged.

- In the Stipulation, it was alleged that if the conduct regarding the four patients were proven, that would constitute a violation of RCW 18.130.180 subdivisions (4) and (16).[2]

- "The parties wish to resolve this matter by means of a Stipulation to Informal Disposition pursuant to RCW 18.130.172(1)."

- Respondent agreed to be bound by the terms of the Stipulation.

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[2] The following conduct, acts, or conditions constitute unprofessional conduct for any license holder under the jurisdiction of this chapter:

. . . .

(4) Incompetence, negligence, or malpractice which results in injury to a patient or which creates an unreasonable risk that a patient may be harmed. The use of a nontraditional treatment by itself shall not constitute unprofessional conduct, provided that it does not result in injury to a patient or create an unreasonable risk that a patient may be harmed;

. . . .

(16) Promotion for personal gain of any unnecessary or inefficacious drug, device, treatment, procedure, or service;

- "This Stipulation is of no force and effect and is not binding on the parties."

- "Respondent does not admit any of the allegations in the Statement of Allegations and Summary of Evidence or in paragraph 1.1.[3] above. This Stipulation shall not be construed as a finding of unprofessional conduct or inability to practice."

- "This Stipulation is not formal disciplinary action. However, if the Commission accepts it, it will be reported to the Health Integrity and Protection Databank (45 CFR Part 61), and it may be reported to the National Practitioner Databank (45 CFR Part 60) and elsewhere as required by law."

- "Respondent is advised and understands that a violation of the provisions of Section 2 of this Stipulation, if proved, would constitute grounds for discipline."

Pursuant to RCW 18.130.172, subdivision (2), and the "above stipulation", the parties agreed to the following Informal Disposition, to wit: "Respondent SURRENDERS his license. Respondent will not resume the practice of medicine in the state of Washington including temporary, emergency, or volunteer practice. Respondent has no right to apply for license renewal or reactivation."

6. As a consequence of the Stipulation, respondent surrendered his license to practice medicine in Florida and New Mexico.

7. Respondent vehemently denied that he provided improper care and treatment of patients in the State of Washington.

He testified that he entered into the Agreement with L & I because he had no intention of returning to practice medicine in Washington; he had more pressing issues in his personal life; considering the foregoing, and doing a "cost benefit analysis," he concluded that it would be more cost effective to enter into the Agreement.

He entered into the Stipulation for similar reasons. In addition, he understood that he was making no admission of wrongdoing, that he had ceased engaging in the conduct prohibited by the Stipulation, and he understood it was "informal discipline" and not true discipline of his license in Washington.

8. Since he ceased practice in Washington, and in to make sure that the issue that resulted in the action in Washington does not occur in California, respondent testified that he

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[3] The facts in paragraph 1.1 relate to the care and treatment of the four patients.

completed the IMQ Professionalism Program, a medical ethics course to better familiarize himself with the issues, the University of California – San Diego, School of Medicine, Physician Assessment and Clinical Education Program (PACE) "Physician Prescribing Course" to make sure that his prescribing was within the standard of care. In addition, he completed additional continuing medical education (CME) courses, exceeding that required by the Medical Board. The courses dealt with issues such as treating workers' compensation patients and ordering diagnostic tests.

9. On direct examination, respondent's attorney asked whether, through the CMEs, medical prescribing course and ethics course, he learned that he acted improperly in treatment and ordering diagnostic tests in Washington, respondent testified, "absolutely not".

LEGAL CONCLUSIONS

1. Complainant bears the burden of proving the charges by clear and convincing evidence to a reasonable certainty. (*Ettinger* v. *Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) This requires that he present evidence "of such convincing force that it demonstrates, in contrast to the opposing evidence, a high probability of the truth" of the charges (BAJI 2.62), and be "so clear as to leave no substantial doubt." (*In re Angelia P.* (1981) 28 Cal.3d 908, 919; *In re David C.* (1984) 152 Cal.App.3d 1189, 1208.) If the totality of the evidence serves only to raise concern, suspicion, conjecture or speculation, the standard is not met.

2. A physician's conduct as a physician can be the subject of discipline if he has engaged in acts that are defined as "unprofessional conduct". In the administrative discipline context, unprofessional conduct refers to acts or omissions that satisfy the definition of gross negligence, repeated negligent acts and/or incompetence.

3. The Medical Board seeks to discipline respondent's physician's and surgeon's certificate pursuant to Business and Professions Code[4] section 2305 based on discipline imposed by the Commission. Section 2305 states, in pertinent part:

> The revocation, suspension, or other discipline, restriction, or limitation imposed by another state upon a license or certificate to practice medicine issued by that state.... that would have been grounds for discipline in California of a licensee under this chapter, shall constitute grounds for disciplinary action for unprofessional conduct against the licensee in this state.

Pursuant to Section 2305, the Medical Board is authorized to take disciplinary action against any physician who, because of conduct committed in another state, has been the subject of out-of-state disciplinary action.

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[4] All references are to the Business and Professions Code unless otherwise specified.

4. On October 6, 2009, the Commission filed a Statement of Allegations and Summary of Evidence based on allegations of respondent's unprofessional conduct involving four patients.

On November 9, 2009, respondent entered into the Stipulation with the Commission. The Stipulation required respondent to surrender his Washington medical license; by its terms, it was based on allegations that respondent committed unprofessional conduct including incompetence, negligence and promotion for personal gain of unnecessary treatment during his care and treatment of four industrially injured workers.

On December 3, 2009, the Commission accepted the Stipulation to Informal Discipline.

Considering the foregoing, complainant contends that respondent's physician's and surgeon's certificate is subject to discipline by the Medical Board.

5. Respondent disputes that his physician and surgeon's certificate is subject to discipline based on the Stipulation. The Stipulation provided: (1) "This Stipulation is not formal disciplinary action." (2) Respondent made no factual or legal admissions. (3) "This Stipulation shall not be construed as a finding of unprofessional conduct or inability to practice." As such, there is no discipline of respondent's license to practice medicine in Washington, and there are no findings that he engaged in unprofessional conduct.

6. The Revised Code of Washington (RCW) 18.130 *et seq.* (Uniform Disciplinary Act) describes the procedure and causes for discipline of medical licenses in the State of Washington.

RCW 18.130.020, subdivision (5) defines "Disciplinary action" as sanctions identified in RCW 18.130.160. RCW 18.130.160, subdivision (12) lists as a sanction "A surrender of the practitioner's license in lieu of other sanctions, which must be reported to the federal data bank." RCW 18.130.172, subdivision (2) provides that the sanctions listed in RCW 18.130.160 may be imposed as part of the Stipulation. In the Stipulation between respondent and the Commission, the parties agreed that the Stipulation must be reported to the Health Integrity and Protection Databank and may be reported to the National Practitioner Databank. Based on the foregoing and the facts of this case, the Commission's acceptance of the Stipulation constitutes disciplinary action because it imposed the disciplinary sanction provided for in RCW 18.130.160, subdivision (12), despite the ambiguity caused by the terms of the Stipulation itself.

7. Complainant is not required to prove the conduct underlying respondent's stipulated license surrender. In the *Marek* case, the California Court of Appeal held that "...Section 2305 requires only that the California Board determine that disciplinary action by another state as to a license to practice medicine issued by that other state had occurred and that the California Board need not take evidence on or establish factual predicate for that

other state's disciplinary action...." (*Marek v. Board of Podiatric Medicine* (1993) 16 Cal.App.4th 1099, 1094.)

In addition, the underlying conduct disposed of in the Stipulation would have been grounds for discipline under Section 2234 had it occurred in California, despite the absence of factual and legal admissions.

8. Considering the facts and the law, cause exists to discipline respondent's physician's and surgeon's certificate pursuant to Section 2305.

9. In determining the appropriate discipline, consideration has been given to the legislative intent that observes that the purpose of the statutory scheme to license and discipline physicians and surgeons is to protect the public interest, rather than punish a wrongdoer. (*Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810.)

The Medical Board has licensed respondent for 13 years. With the exception of discipline imposed by the Commission, there is no evidence of prior discipline. Respondent's reasons for settling his Washington case are credible and understandable; however, it is not appropriate to consider these reasons when determining appropriate discipline. Prior to hearing, respondent completed the University of California, San Diego School of Medicine ethics course, the Pace medical prescribing course and CMEs above and beyond those required to maintain his physician's and surgeon's certificate, particularly courses related to. Discipline by the Commission and the foregoing facts have been considered in making the following order.

ORDER

Physician's and Surgeon's Certificate No. A72688 issued to respondent is revoked. However, revocation is stayed, and respondent is placed on probation for four years upon the following terms and conditions.

1. **Ethics Course**

   Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a course in ethics, at respondent's expense, approved in advance by the Medical Board or its designee. Failure to successfully complete the course during the first year of probation shall constitute a violation of probation.

   An ethics course taken after the acts that gave rise to the charges in the First Amended Accusation, but prior to the effective date of this Decision may, in the sole discretion of the Medical Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Medical Board or its designee had the course been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Medical Board or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of this Decision, whichever is later.

2. **Monitoring – Billing**

Within 30 calendar days of the effective date of this Decision, respondent shall submit to the Medical Board or its designee for prior approval as a billing monitor, the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including but not limited to any form of bartering, shall be respondent's field of practice and must agree to serve as respondent's monitor. Respondent shall pay all monitoring costs.

The Medical Board or its designee shall provide the approved monitor with copies of the Decision and Accusation, and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision, Accusation and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision and Accusation, fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement for approval by the Medical Board or its designee.

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, the approved monitor shall monitor respondent's billing. Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the term of probation.

If respondent fails to obtain approval of a monitor within 60 calendar days of the effective date of this Decision, respondent shall receive a notification from the Medical Board or its designee to cease the practice of medicine within three calendar days after being so notified. Respondent shall cease the practice of medicine until a monitor is approved to provide monitoring responsibility.

The monitor shall submit a quarterly written report to the Medical Board or its designee that includes an evaluation of respondent's performance, indicating whether respondent's practice is within the standard of practice of billing, and

whether respondent is billing appropriately. It shall be the sole responsibility of respondent to ensure that the monitor submits the quarterly written reports to the Medical Board or its designee within 10 calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, within five calendar days of such resignation or unavailability, respondent shall submit to the Medical Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming the responsibility within 15 calendar days. If respondent fails to obtain approval of a replacement monitor within 60 calendars of the resignation or unavailability of the monitor, the Medical Board or its designee shall notify respondent to cease the practice of medicine; within three calendar days after being so notified, respondent shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

In lieu of a billing monitor, respondent may participate in a professional enhancement program equivalent to the one offered by the Physician Assessment and Clinical Education Program at the University of California, San Diego Medical School; at minimum, the program shall include quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at his expense during the term of probation.

3. **Notification**

Prior to engaging in the practice of medicine, respondent shall provide a true copy of the Accusation and Decision to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to respondent, at any other facility where respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to respondent. Within 15 calendar days, respondent shall submit proof of compliance to the Medical Board.

4. **Supervision of Physician Assistants**

During probation, respondent is prohibited from supervising physician assistants.

5. **Obey All Laws**

Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments and other orders.

6. **Quarterly Declarations**

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Medical Board, stating whether there has been compliance with all the conditions of probation.

Respondent shall submit the quarterly declarations not later than 10 calendar days after end of the preceding quarter.

7. **Probation Unit Compliance**

Respondent shall comply with the Medical Board's probation unit. At all times, respondent shall keep the Medical Board informed of his business and residence addresses. Changes of such addresses shall be communicated to the Board or its designees immediately, in writing.

Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021, subdivision (b).

Respondent shall not engage in the practice of medicine in his place of residence. Respondent shall maintain a current and renewed California Certificate.

Respondent shall inform the Medical Board or its designee, immediately, in writing, of travel to any areas outside the jurisdiction of California, which lasts, or is contemplated to last, more than 30 calendar days.

8. **Interview with the Medical Board or its Designee**

Respondent shall be available in person for interviews either at respondent's place of business or at the probation unit office, with the Medical Board or its designee, upon request, at various intervals and either with or without prior notice throughout the term of probation.

9. **Residing or Practicing Out-of-State**

If respondent leaves the State of California to reside or to practice, he shall notify the Medical Board or its designee, in writing, 30 calendar days prior to

the dates of departure and the dates of return. Non-practice is defined as any period of time exceeding 30 calendar days in which respondent is not engaging in any activities **defined in Business and Professions Code sections 2051 and 2052.**

All time spent in an intensive training program outside the State of California that has been approved by the Medical Board or its designee shall be considered as time spent in the practice of medicine within the State. A Board-ordered suspension of practice shall not be considered as a period of non-practice. Periods of temporary or permanent residence or practice outside California will not apply to the reduction of the probationary term. Periods of temporary or permanent residence or practice outside California will relieve respondent of his responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: including Obey All Laws (paragraph 6) and Probation Unit Compliance (paragraph 8).

Respondent's Certificate shall be automatically cancelled if respondent's periods of temporary or permanent residence or practice outside California total two years. However, respondent's Certificate shall not be cancelled as long as respondent is residing and practicing medicine in another state of the United States and is on active probation with the medical licensing authority of that State, in which case the two year period shall begin on the date probation is completed or terminated in that State.

10. **Failure to Practice Medicine – California Resident**

If respondent resides in the State of California and ceases practicing medicine in California, he shall notify the Medical Board or its designee, in writing, within 30 calendar days prior to the dates of non-practice and return to practice. Any period of non-practice in California, as defined in this condition, will not apply to the reduction of the probationary term and does not relieve respondent of the responsibility to comply with the terms and conditions of probation. Non-practice is defined as any period of time exceeding 30 calendar days in which respondent is not engaging in any activities **described in Business and Professions Code sections 2051 and 205**2.

Any time spent in an intensive training program that the Medical Board or its designee has approved shall be considered time spent in the practice of medicine. For purposes of this condition, non-practice due to a Medical Board ordered suspension or in compliance with any other condition of probation, shall not be considered a period of non-practice.

Respondent's Certificate shall be automatically cancelled if he resides in California for a total of two years, and does not engage in any of the activities **described in Business and Professions Code sections 2051 and 2052 in California.**

11. **Probation Monitoring Costs**

Respondent shall pay probation monitoring costs each year of probation, as designated by the Medical Board; these costs may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and shall be delivered to the Medical Board or its designee no later than January 31 of each calendar year. Failure to pay these costs within 30 calendar days of the due date shall constitute a violation of probation.

12. **Certificate Surrender**

Subsequent to the effective date of this Decision, if respondent ceases practice due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, he may request to surrender his Certificate voluntarily. The Medical Board reserves the right to evaluate respondent's request and to exercise its discretion whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, within 15 calendar days, respondent shall deliver his wallet and wall certificate to the Medical Board or its designee, and respondent shall no longer practice medicine. He will no longer be subject to the terms of probation, and the surrender of his Certificate shall be deemed disciplinary action. If respondent reapplies for a medical Certificate, the application shall be treated as a petitioner for reinstatement of a revoked certificate.

13. **Violation of Probation**

Failure to comply with any term of probation shall constitute a violation of probation. If respondent violates probation in any respect, after giving respondent notice and the opportunity to be heard, the Medical Board may revoke probation and carry out the disciplinary order that was stayed. If an Accusation or Petition to Revoke Probation or an Interim Suspension Order is filed against respondent during probation, the Medical Board shall have continuing jurisdiction until this matter is final, and the period of probation shall be extended until the matter is final.

14. **Completion of Probation**

Respondent shall pay outstanding probation costs no later than 120 calendar days prior to completion of probation. Upon successful completion of probation, respondent's Certificate shall be fully restored.

DATED: August 5, 2013

VALLERA J. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

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Attorneys for Complainant
Medical Board of California

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **CHIRAG NARAYAN AMIN, M.D.** 3166 Shandwick Circle Corona, CA 92882 Physician's and Surgeon's Certificate No. A72688 Respondent.	**Case No. 16-2009-203756** **A C C U S A T I O N**

The Complainant alleges:

1. Complainant Linda K. Whitney is the Interim Executive Director of the Medical Board of California, Department of Consumer Affairs, and brings this Accusation solely in her official capacity.

2. On or about July 27, 2000, Physician's and Surgeon's Certificate No. A72688 was issued by the Medical Board of California to Chirag Narayan Amin, M.D.

(hereinafter "respondent.") The certificate is renewed and current with an expiration date of October 31, 2011.

JURISDICTION

3. This Accusation is brought before the Medical Board of California[1], (hereinafter the "Board") under the authority of the following sections of the California Business and Professions Code (hereinafter "Code") and/or other relevant statutory enactment:

A. Section 2227 of the Code provides in part that the Board may revoke, suspend for a period not to exceed one year, or place on probation, the license of any licensee who has been found guilty under the Medical Practice Act, and may recover the costs of probation monitoring.

B. Section 2305 of the Code provides, in part, that the revocation, suspension, or other discipline, restriction or limitation imposed by another state upon a license to practice medicine issued by that state, that would have been grounds for discipline in California under the Medical Practice Act, constitutes grounds for discipline for unprofessional conduct.

FIRST CAUSE FOR DISCIPLINE

(Discipline, Restriction, or Limitation Imposed by Another State)

4. On or about December 3, 2009, the State of Washington Department of Health Medical Quality Assurance Commission ("Commission") issued a Stipulation to Informal Disposition regarding respondent's license to practice medicine in Washington. The Commission alleged that on January 31, 2009, respondent (whose practice focused on treatment of injured workers) entered into a settlement agreement with the Washington Department of Labor and Industries under which respondent agreed to refund the amount of $50,000 for recoupment of payments and penalties for medically unnecessary care respondent provided to numerous

[1]. As used herein, the term "Board" means the Medical Board of California. As used herein, "Division of Medical Quality" shall also be deemed to refer to the Board.

patients; respondent also agreed to discontinue in-office diagnostic testing and to permanently discontinue examining, evaluating and treating injured workers. The Commission agreed to forgo further disciplinary proceedings, and respondent surrendered his Washington license. Under the terms of the Stipulation to Informal Disposition, respondent may not resume the practice of medicine in Washington, and has no right to apply for license renewal or reactivation. A true and correct copy of the Stipulation to Informal Disposition issued by the Washington Department of Health Medical Quality Assurance Commission is attached hereto as Exhibit A.

5. Respondent's conduct and the action of the Washington Department of Health Medical Quality Assurance Commission as set forth in paragraph 4, above, constitute unprofessional conduct and cause for discipline within the meaning of section 2305

PRAYER

WHEREFORE, the complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number A72688 heretofore issued to respondent Chirag Narayan Amin, M.D.;

2. Revoking, suspending or denying approval of the respondent's authority to supervise physician assistants;

3. Ordering respondent, if placed on probation, to pay the costs probation monitoring; and

4. Taking such other and further action as the Board deems necessary and proper.

DATED: March 24, 2010.

LINDA K. WHITNEY
Interim Executive Director
Medical Board of California
Department of Consumer Affairs
State of California

Complainant

Exhibit A

STATE OF WASHINGTON
DEPARTMENT OF HEALTH
MEDICAL QUALITY ASSURANCE COMMISSION

In the Matter of the license of **CHIRAG N. AMIN, MD** License No. MD00044513 Respondent.	**No. M2009-1195** **STIPULATION TO INFORMAL DISPOSITION**

1. STIPULATION

The Medical Quality Assurance Commission (Commission), represented by Lawrence J. Berg, Staff Attorney, and Respondent, represented by counsel, if any, stipulate to the following terms.

1.1 Chirag N. Amin, MD, Respondent, is informed and understands that the Disciplinary Manager of the Medical Quality Assurance Commission (Commission), has been authorized by the Commission to make the following allegations.

1.1.1 On January 11, 2005, the state of Washington issued Respondent a license to practice as a physician. Respondent is non-board certified and his practice in Washington consisted of – in large part – the care and treatment of injured workers. Respondent's license expires on October 27, 2009, but is subject to renewal.

1.1.2 On January 31, 2009, Respondent entered into a Settlement Agreement with the Department of Labor & Industries (L&I). L&I had conducted a comprehensive evaluation of the care provided by Respondent to twenty-one (21) injured workers. Respondent agreed to refund to L&I the amount of $50,000.00 for recoupment of payments for medically unnecessary care and penalties. Respondent also agreed to discontinue in-office diagnostic testing and to permanently discontinue examining, evaluating and treating injured workers covered by RCW Title 51.

1.1.3 Patient A incurred an industrial injury on March 3, 2000. The patient had a prior history of tendonitis in both elbows, carpal tunnel

syndrome at both wrists, and low back pain. She subsequently developed neck pain. Patient A had numerous surgical procedures, including carpal tunnel release, cervical discectomy, and cervical fusion and refusion. In 2003 it was concluded that Patient A was not a candidate for further surgery based on the fact that she did not have any continued deficits on electrodiagnostic studies. After that, she received maintenance sustained release narcotics.

1.1.4 Respondent treated Patient A on a monthly basis from June 19, 2006 through October 23, 2007. Patient A's progress reports were essentially identical except for different subjective complaints on each visit, and Respondent performed essentially the same tests with the same essential results and no changes in the patient's treatment plan. Tests included both computerized range of motion (ROM) and manual ROM. Respondent also routinely performed pulse oximetry tests even though Patient A had no documented cardiopulmonary disease. Respondent conducted nerve conduction velocity (NCV) testing of Patient A's sensory and motor systems even though there was no documentation of any change in the claimant's neurologic signs and symptoms.

1.1.5 Respondent prescribed ranitidine – an acid reducer – to Patient A even though there is no documentation of any dyspepsia, peptic ulcer disease, or gastroesophageal reflux disease.

1.1.6 Patient B incurred industrial injuries to his left shoulder on October 10, 2002 and his right shoulder on May 24, 2004. Arthroscopic labral debridement was performed on his left shoulder on January 29, 2003, and Patient B returned to full work duty. An acute onset of right shoulder pain occurred in May 2004, and his left shoulder claim was re-opened in October 2004. A neurological consult was performed in January 2005, and there was no definite evidence of mechanical impingement. An independent medical evaluation was performed by an orthopedic surgeon in March 2005. Surgery was not recommended, but Patient B

was thought to be a candidate for bilateral closed manipulation under general anesthesia, along with steroid injections and physical therapy.

1.1.7 On June 4, 2005, Respondent began treating Patient B for ongoing complaints of bilateral shoulder pain. An initial evaluation was performed, certain studies were ordered, and a course of physical therapy was initiated. Thereafter, at each monthly visit for bilateral shoulders, upper extremity ROM computerized testing was performed along with various combinations of ultrasound, electrodiagnostic testing with the Brevio handheld device, and pulse oximetry testing.

1.1.8 Respondent recommended referral to another orthopedic surgeon for a second opinion. Patient B initially consulted with the orthopedic surgeon in October 2005, and a proactive course of treatment continued through July 19, 2007. Respondent continued to consult with Patient B throughout that term.

1.1.9 Respondent performed multiple electrode electromyelogram (EMG) and nerve conduction studies done with the Brevio handheld device even though there was no documentation indicating changes in Patient B's neurologic examination that would justify repetitive nerve conduction testing.

1.1.10 Respondent performed multiple computer generated ROM testing of Patient B rather than manual testing, and Respondent failed to document any change in Patient B's treatment plan based on that ongoing data. Respondent also routinely performed pulse oximetry tests even though Patient A had no documented cardiopulmonary disease.

1.1.11 Respondent continued to perform ultrasound of Patient B's bilateral shoulders subsequent to magnetic resonance imaging (MRI) and MRI arthrogram tests, even though ultrasound generally is utilized as a low cost screening option and less sensitive than MRI testing.

1.1.12 Respondent prescribed ranitidine – an acid reducer – to Patient B even though there is no documentation of any dyspepsia, peptic ulcer disease, or gastroesophageal reflux disease.

1.1.13 Patient C was obese and 51 years old when injured in January 2005 while lifting a patient in her occupation of home health care aide. MRI testing in June 2005 showed degenerative disc disease of the lumbar spine with facet arthropathy, and bilateral degenerative joint disease of the knees. She was treated with physical therapy, non-steroidal anti-inflammatory medications, and chiropractic treatment.

1.1.14 Respondent provided medical services to Patient C on a monthly basis from August 13, 2005 through January 3, 2006, and March 13, 2006 though approximately August 2007. Respondent routinely performed computerized ROM testing, vital sign assessment with pulse oximetry, and EMG/NCV testing at each consult. These tests are not proven to have diagnostic merit.

1.1.15 In January 2007, Respondent added diagnostic ultrasound of the lumbar spine to the serial, repetitive testing of Patient C. Physiological findings were unchanged from Patient C's initial diagnosis from June 2005. Patient C's clinical condition did not change as the result of Respondent's treatment.

1.1.16 On July 13, 2002, Patient D fell from a ladder while picking cherries. She subsequently complained of right knee and lower back pain. A MRI performed on January 2, 2003, was reported as normal and she started a course of physical therapy.

1.1.17 Patient D experienced persistent pain. A repeat MRI of the right knee performed on April 23, 2004, was not significantly different than the previous test. Patient D began another course of physical therapy from April 18, 2005 through April 29, 2005.

1.1.18 Respondent began treating Patient D on April 30, 2005. A third MRI performed on May 12, 2005, showed a tear of the posterior horn of the lateral meniscus. Patient D was treated extensively with physical therapy, chiropractic services, periodic electrodiagnosis studies, and monthly computerized ROM testing. Patient D underwent independent medical exams (IMEs) in August and September 2005. Arthroscopy of

the right knee with a lateral meniscectomy was performed on October 6, 2005.

1.1.19 Patient D began another course of physical therapy from December 21, 2005 though March 23, 2006. Patient D's orthopedic surgeon concluded that she was fixed and stable, no further treatment was indicated, and no anatomic restriction or abnormality was noted to support her pain complaints. Respondent continued treating Patient D through August 22, 2007, including monthly computerized ROM studies, vital sign assessment with pulse oximetry monthly from August 28, 2006, and several ultrasound evaluations of the knee (beginning in November 2006) and low back (beginning in January 2007). Patient D also continued chiropractic treatment and massage therapy in conjunction with physical therapy, and Respondent performed gait analysis computerized evaluations, postoperatively.

1.1.20 A repeat MRI of the right knee performed September 6, 2006, showed no evidence of recurrent or residual meniscus tear, and Patient D participated in a work conditioning program from January 10, 2007 though February 12, 2007. An IME performed in February 2007 determined that Patient D was at maximum medical improvement; however, Respondent kept Patient D at total disability. A repeat functional capacities evaluation in April 2007 concluded that Patient D could work full time at light level work activity; however, Respondent kept Patient D at total disability.

1.2 Respondent is informed and understands that the Commission has alleged that the conduct described above, if proven, would constitute a violation of RCW 18.130.180(4) and (16).

1.3 The parties wish to resolve this matter by means of a Stipulation to Informal Disposition pursuant to RCW 18.130.172(1).

1.4 Respondent agrees to be bound by the terms and conditions of the Stipulation to Informal Disposition (Stipulation).

1.5 This Stipulation is of no force and effect and is not binding on the parties unless and until it is accepted by the Commission.

1.6 Respondent does not admit any of the allegations in the Statement of Allegations and Summary of Evidence or in paragraph 1.1 above. This Stipulation shall not be construed as a finding of unprofessional conduct or inability to practice.

1.7 This Stipulation is not formal disciplinary action. However, if the Commission accepts it, it will be reported to the Health Integrity and Protection Databank (45 CFR Part 61), and it may be reported to the National Practitioner Databank (45 CFR Part 60) and elsewhere as required by law.

1.8 This Stipulation is a public document and will be placed on the Department of Health's website and otherwise disseminated as required by the Public Records Act, Chapter 42.56 RCW. The Statement of Allegations and the Stipulation shall remain part of Respondent's file and cannot be expunged.

1.9 The Commission agrees to forego further disciplinary proceedings concerning the allegations contained in paragraph 1.1 above.

1.10 Respondent agrees to successfully complete the terms and conditions of this informal disposition.

1.11 Respondent is advised and understands that a violation of the provisions of Section 2 of this Stipulation, if proved, would constitute grounds for discipline under RCW 18.130.180 and the imposition of sanctions under RCW 18.130.160.

2. INFORMAL DISPOSITION

Pursuant to RCW 18.130.172(2) and based upon the above stipulation, the parties agree to the following Informal Disposition.

2.1 **Surrender.** Respondent SURRENDERS his license. Respondent will not resume the practice of medicine in the state of Washington including temporary, emergency, or volunteer practice. Respondent has no right to apply for license renewal or reactivation.

2.2 **Costs.** Respondent must assume all costs of complying with this Stipulation.

2.3 **Effective Date.** The effective date of this Stipulation to Informal Disposition is the date the Adjudicative Clerk Office places the signed Stipulation into

the U.S. mail. If required, Respondent shall not submit any fees or compliance documents until after the effective date of this Stipulation.

3. COMPLIANCE WITH SANCTION SCHEDULE

3.1 The Commission applies WAC 246-16-800, *et seq.*, to determine appropriate sanctions, including stipulations to informal dispositions under RCW 18.130.172. Aspects of Respondent's alleged conduct fall in Tier A of the "Practice Below Standard of Care" schedule, WAC 246-16-810; however other aspects are not addressed by the sanction schedules stated in the rules. RCW 18.130.390 and WAC 246-16-800(1)(d) require the Commission to use its judgment to stipulate appropriate sanctions when the sanction schedules do not address the conduct in question. Where alleged acts of misconduct fall into more than one sanction schedule, the greater sanction is imposed. Likewise, if some alleged acts of misconduct fall into a sanctions schedule but other alleged acts are not covered, then the greater appropriate sanction is also imposed.

3.2 WAC 246-16-800(3)(c) directs the Commission to identify aggravating or mitigating factors and select sanctions within the minimum and maximum range of the appropriate sanction schedule tier or to determine appropriate sanctions outside the schedules. It is an aggravating factor that allegations comprise a pattern of conduct involving unnecessary medical care and excessive reimbursement payments. Although the Statement of Allegations only addresses the treatment of four patients, there were a total of twenty-one patients covered by the L&I Settlement Agreement. Although the L&I Settlement Agreement expressly states that the agreement "shall not be construed as an admission of error, liability, violation or wrongdoing" by Respondent or L&I, the agreement also states that the refund was for medically unnecessary care and the settlement constitutes a de facto surrender of privileges to treat L&I claimants.

3.3 The proposed sanctions in this case constitute a deviation from the sanctioning schedules. The aggravating factors in this case, coupled with the fact that some alleged conduct is not covered by the sanction schedules, support this outcome. Respondent's address of record throughout the time period relevant to this case was in California. Respondent did not maintain a full-time office in the state of Washington; his primary purpose for practicing in Washington was to provide medical services to L&I

claimants, and he utilized part-time temporary facilities when treating patients. Since Respondent's primary purpose for practicing in Washington was to provide medical services to L&I claimants, terms in the Settlement Agreement providing for Respondent to permanently discontinue examining, evaluating and treating injured workers reflect his intent to cease the practice of medicine in the state of Washington.

3.4 Pursuant to WAC 246-16-800(2)(b)(iii), surrender of a credential is appropriate when the license holder agrees to retire and not resume practice. Respondent has already surrendered his privilege to treat injured workers in the state of Washington and demonstrated his intent not to resume practice. The totality of circumstances in this case supports a deviation from sanction schedules and justify the sanctions imposed in this Stipulation.

4. RESPONDENT'S ACCEPTANCE

I, CHIRAG N. AMIN, MD, Respondent, certify that I have read this Stipulation to Informal Disposition in its entirety; that my counsel of record, if any, has fully explained the legal significance and consequence of it; that I fully understand and agree to all of it; and that it may be presented to the Commission without my appearance. If the Commission accepts the Stipulation to Informal Disposition, I understand that I will receive a signed copy.

CHIRAG N. AMIN, MD
RESPONDENT

11/9/09
DATE

, WSBA #
ATTORNEY FOR RESPONDENT

DATE

5. COMMISSION'S ACCEPTANCE

The Commission accepts this Stipulation to Informal Disposition. All parties shall be bound by its terms and conditions.

DATED: December 3, 2009.

STATE OF WASHINGTON
DEPARTMENT OF HEALTH
MEDICAL QUALITY ASSURANCE COMMISSION

Frederick H Dore MD
PANEL CHAIR

PRESENTED BY:

LAWRENCE J. BERG, WSBA#22334
DEPARTMENT OF HEALTH STAFF ATTORNEY